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20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 Ronald Cupp,
23
24 Plaintiff,
25
26 vs.
27 I.C. System, Inc.,
28 Defendant.

Case No. 3:15-cv-01562-JST
(Honorable Jon S. Tigar)

**JOINT CASE MANAGEMENT
STATEMENT AND
[PROPOSED] ORDER**

Courtroom: 9

Complaint Filed: 4/6/2015

29
30
31 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD**
32 **HEREIN:**

33 The parties to the above-entitled action jointly submit this JOINT CASE
34 MANAGEMENT STATEMENT AND PROPOSED ORDER pursuant to the
35 Standing Order for All Judges of the Northern District of California dated July 1,
36 2011 and Civil Local Rule 16-9.

37 **1. Jurisdiction and Service:** *The basis for the court's subject matter jurisdiction*
38 *over plaintiff's claims and defendant's counterclaims, whether any issues exist*

1 *regarding personal jurisdiction or venue, whether any parties remain to be served,*
2 *and, if any parties remain to be served, a proposed deadline for service.*

3 This Court has subject matter jurisdiction under 15 U.S.C. §1692k(d), 47
4 U.S.C. §227, and 28 U.S.C. §1331.

5 **2. Facts:** *A brief chronology of the facts and a statement of the principal factual*
6 *issues in dispute.*

7 Plaintiff alleges that Defendant called his cellular phone number (707) 318-
8 9929 during the time period February 7, 2015 through February 18, 2015 in an
9 attempt to collect an outstanding account balance, in violation of the Telephone
10 Consumer Protection Act, 47 U.S.C. §227, *et seq.* ("TCPA"), Fair Debt Collection
11 Practices Act, 15 U.S.C. §1692, *et seq.* ("FDCPA"), and the Rosenthal Fair Debt
12 Collection Practices Act, Cal. Civil Code §1788, *et seq.* ("Rosenthal Act").

13 **3. Legal Issues:** *A brief statement, without extended legal argument, or the*
14 *disputed points of law, including reference to specific statutes and decisions.*

15 a. Whether the phone system used by Defendant to call Plaintiff's cellular
16 phone constitutes an automated telephone dialing system under 47 U.S.C. §227(a)(1)
17 of the TCPA;

18 b. Whether the phone system used by Defendant to call Plaintiff's cellular
19 phone constitutes an artificial or prerecorded voice under the TCPA;

20 c. Whether Plaintiff consented to receiving calls on his cellular phone
21 using an automated telephone dialing system or artificial or prerecorded voice;

22 d. Whether any of the calls to Plaintiff were made with the intent to violate
23 the TCPA;

24 e. Whether the subject outstanding account balance constitutes a consumer
25 "debt" incurred for personal, family, or household purposes, as defined by 15 U.S.C.
26 §1692(a)(5), and is thus actionable under the FDCPA and the Rosenthal Act;

27 f. Whether the nature and extent of calls to Plaintiff rose to the level of
28 harassment under 15 U.S.C. §1692d(5);

1 g. Whether Defendant provided meaningful disclosure of its identity
2 during its phone calls to Plaintiff as required by 15 U.S.C. §1692d(6);

3 h. Whether Defendant made any false representation or used any deceptive
4 means in an attempt to collect the subject outstanding account balance, in violation
5 of 15 U.S.C. §1692e(10).
6

7 **4. Motions:** *All prior and pending motions, their current status, and any*
8 *anticipated motions.*

9 There were no previous motions, and there are no current motions pending.
10 Plaintiff anticipates filing Motion for Judgment on the Pleadings or Summary
11 Judgment. Defendant anticipates filing a motion for summary judgment.

12 **5. Amendment of Pleadings:** *The extent to which parties, claims, or defenses*
13 *are expected to be added or dismissed and a proposed deadline for amending the*
14 *pleadings.*

15 At this time, Plaintiff and Defendant do not intend to add or dismiss any
16 claims and/or parties.

17 **6. Evidence Preservation:** *A brief report certifying that the parties have*
18 *reviewed the Guidelines Relating to the Discovery of Electronically Stored*
19 *Information ("ESI Guidelines"), and confirming that the parties have met and*
20 *conferred pursuant to F.R.C.P. 26(f) regarding reasonable and proportional steps*
21 *taken to preserve evidence relevant to the issues reasonably relevant in this action.*
22 *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*

23 The parties have reviewed the Guidelines Relating to the Discovery of
24 Electronically Stored Information ("ESI Guidelines"), and confirm that they have
25 met and conferred pursuant to F.R.C.P. 26(f) regarding reasonable and proportionate
26 steps taken to preserve evidence relevant to the issues reasonably relevant in this
27 action.
28

1 **7. Disclosures:** *Whether there has been full and timely compliance with the*
2 *initial disclosure requirements of F.R.C.P. 26, and a description of the disclosures*
3 *made.*

4 The parties propose to serve initial disclosures on or before July 24, 2015.

5 **8. Discovery:** *Discovery taken to date, if any, the scope of anticipated*
6 *discovery, any proposed limitations or modifications of the discovery rules, a brief*
7 *report on whether the parties have considered entering into a stipulated e-discovery*
8 *order, a proposed discovery plan pursuant to F.R.C.P. 26(f), and any identified*
9 *discovery disputes.*

10 No discovery has been undertaken to date. The parties intend to propound
11 interrogatories, requests for production, and requests for admissions. Defendant
12 intends to depose Plaintiff and certain third parties identified in discovery if
13 necessary. Defendant requires a protective order with respect to certain of
14 Defendant's confidential business and proprietary information, and the parties will
15 submit a proposed order to the Court which will also address the handling of e-
16 discovery. Plaintiff opposes a protective order until such time as the items in
17 question are ascertained. The parties do not propose any modification to the
18 applicable rules of discovery.

19 **9. Class Actions:** *If a class action, a proposal for how and when the class will*
20 *be certified.*

21 Not applicable.

22 **10. Related Cases:** *Any related cases or proceedings pending before another*
23 *judge of this court, or before another court or administrative body.*

24 Not applicable.

25 **11. Relief:** *All relief sought through complaint or counterclaim, including the*
26 *amount of any damages sought and a description of the bases on which damages are*
27 *calculated. In addition, any party from whom damages are sought must describe the*
28 *bases on which it contends damages should be calculated if liability is established.*

1 Plaintiff seeks in excess of \$15,000 as outlined in the complaint for violations
2 of 15 USC 1692 *et seq.*, 47 USC 227 *et seq.*, and California Rosenthal Act §1788 *et*
3 *seq.*

4 **12. Settlement and ADR:** *Prospects for settlement, ADR efforts to date, and a*
5 *specific ADR plan for this case, including compliance with ADR L.R. 3-5 and a*
6 *description of key discovery or motions necessary to position the parties to negotiate*
7 *a resolution.*

8 The parties have agreed to participate in mediation pursuant to ADR L.R. 6,
9 and have filed the Stipulation to ADR Process. *See* Dkt. No. 15 and 16. Pursuant to
10 the Court's July 10, 2015 Order [Dkt. No. 14], the parties state as follows with
11 respect to their failure to timely file an ADR Certification and Stipulation to ADR
12 Process:

13 **a. Plaintiff:** Apologies to the Court for missing the deadline for filing the
14 ADR Certification and Stipulation to ADR Process, as outlined below, Plaintiff and
15 Defendant will comply as outlined in the courts Order.

16 **b. Defendant:** Due to an administrative error, the deadline for filing the
17 ADR Certification and Stipulation to ADR Process was not entered into defense
18 counsel's calendar. As such, the June 18, 2015 deadline for filing those documents
19 passed. Defense counsel sincerely apologizes to the Court for their error and the
20 inconvenience caused by their tardy filing, and will be reviewing and updating its
21 procedures for calendaring deadlines to ensure such an error does not occur again.
22 Defendant and its counsel respectfully request that no sanctions be imposed for this
23 good faith mistake.

24 **13. Consent to Magistrate Judge For All Purposes:** *Whether all parties will*
25 *consent to have a magistrate judge conduct all further proceedings including trial*
26 *and entry of judgment.*

27 All parties have not consented to have a magistrate judge conduct all further
28 proceedings including trial and entry of judgment. *See* Dkt. No. 6.

1 **14. Other References:** *Whether the case is suitable for reference to binding*
2 *arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.*

3 The parties do not believe this case is suitable for other references.

4 **15. Narrowing of Issues:** *Issues that can be narrowed by agreement or by*
5 *motion, suggestions to expedite the presentation of evidence at trial (e.g. through*
6 *summaries or stipulated facts), and any request to bifurcate issues, claims, or*
7 *defenses.*

8 The parties agree to continue to attempt to narrow the issues for trial.

9 **16. Expedited Trial Procedure:** *Whether this is the type of case that can be*
10 *handled under the Expedited Trial Procedure of General Order No. 64 Attachment*
11 *A. If all parties agree, they shall instead of this Statement, file an executed*
12 *Agreement for Expedited Trial and a Joint Expedited Case Management Statement,*
13 *in accordance with General Order No. 64 Attachments B and D.*

14 No.

15 **17. Scheduling:** *Proposed dates for designation of experts, discovery cutoff,*
16 *hearing of dispositive motions, pretrial conference and trial.*

17	Fact Discovery cut-off:	November 5, 2015
18	Expert Designations and Reports, if any:	November 19, 2015
19	Expert Discovery cut-off, if any:	December 18, 2015
20	Last Day to File Dispositive Motions:	January 19, 2016
21	Last Day to Hear Dispositive Motions:	February 23, 2016
22	Pre-trial Conference:	March 22, 2016
23	Trial:	April 5, 2016

24 **18. Trial:** *Whether the case will be tried to a jury or to the court and the expected*
25 *length of the trial.*

26 The case will be tried to a jury, and the parties anticipate that the trial will take
27 2 to 3 days.
28

1 **19. Disclosure of Non-party Interested Entities or Persons:** *Whether each*
2 *party has filed the "Certification of Interested Entities or Persons" required by Civil*
3 *Local Rule 3-15. In addition, each party must restate in the case management*
4 *statement the contents of its certification by identifying any persons, firms,*
5 *partnerships, corporations (including parent corporations) or other entities known*
6 *by the party to have either (i) a financial interest in the subject matter in controversy*
7 *or in a party to the proceeding; or (ii) any other kind of interest that could be*
8 *substantially affected by the outcome of the proceeding.*

9 Defendant has filed the requisite certificate. See Dkt. No. 7.

10 **20. Professional Conduct:** *Whether all attorneys of record for the parties have*
11 *reviewed the Guidelines for Professional Conduct for the Northern District of*
12 *California.*

13 All attorneys of record have reviewed the Guidelines for Professional Conduct
14 for the Northern District of California.

15 **21. Such other matters as may facilitate the just, speedy and inexpensive**
16 **disposition of this Matter:**

17 None at this time.

18
19 DATED: July 14, 2015

HINSHAW & CULBERTSON LLP

20 By: /s/ Renee C. Ohlendorf
21 Renee Choy Ohlendorf
Attorneys for Defendant I.C. System, Inc.

22 DATED: July 14, 2015

23 By: /s/ Ronald Cupp
Ronald Cupp, Plaintiff in Pro Per

1 **FILER ATTESTATION**

2 Pursuant to Rule 5-1(i)(3) of the Local Rules of Practice in Civil Proceedings Before
3 the United States District Court for the Northern District of California, I, Renee Choy
4 Ohlendorf, hereby attest that concurrence in the filing of this document has been obtained
5 from each of the other signatories.
6

7 I declare under penalty of perjury under the laws of the State of California and the
8 United States of America that the foregoing is true and correct.

9 *s/Renee Choy Ohlendorf*
10 Renee Choy Ohlendorf
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